IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2007

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Civil Miscellaneous Appeal No.245 of 2000

1. Dhavamani
2. Minor Jayaprema
3. Minor Jayapriya
.. Minors 2 & 3 rep. by their mother & natural guardian .. Appellants

Vs.

1. Ideal Spinning Mills Ltd.,
   4, Nehru Nagaram, Salem – 4.

2. United India Insurance Co. Ltd.,
   Division Office-II,
   Peramanoor Main Road,
   Salem – 7. .. Respondents

Appeal against the order of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem, dated 8.7.1998 made in W.C.No.141 of 1996.

For Appellants : Mr. P. Thirunavukarasu
For Respondents : Mr. V. Srinivasn – R1
Mr. C. Ramesh Babu – R2

J U D G M E N T

The applicants before the Commissioner for Workmen's Compensation have preferred the above appeal against the award dated 08.07.1998 made in W.C.No.141 of 1996 on the file of the Deputy Commissioner of Labour (Commissioner for Workmen's Compensation), Salem, for enhancement of the award amount.

2. The deceased Sennan, who is the husband of the first appellant/first claimant and father of appellants 2 & 3/claimants 2 & 3, was working as a driver in the lorry bearing Registration No.TN-27-5533 belonging to the first respondent company and insured with the second respondent. On 10.09.1995, when he was driving the lorry near Mettupatty Thathanoor, he gave way to the lorry, which came in the opposite direction, and while so, the lorry dragged due to slit soil and drizzling

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and hit against a tamarind tree, due to which, he sustained grievous injuries and died on the spot. The appellants filed a petition claiming a compensation of Rs.2,00,000/-.

3. The claim petition was resisted by the first respondent/employer stating that the alleged accident had taken place only due to the carelessness and negligent driving of the vehicle by the deceased and that the vehicle involved in the accident had been fully insured with the second respondent and hence the second respondent is liable to pay compensation. According to the second respondent-insurance company, the deceased was not an employee under the first respondent-company, which alone had taken insurance policy, and he was an employee of Sree Solaiandavar Textile Mills, and since the deceased was carrying more than sixty persons belonging to a marriage party in the lorry for hire or reward, which is not his part of employment, violating the insurance policy conditions, the second respondent/insurance company is not liable to pay any amount.

4.1. The Commissioner, based on Ex.A1, first information report, wherein the informer has stated that when the deceased was driving the lorry near Metthupatty Thathanoor, he gave way to the lorry which came in the opposite direction and while so, the lorry hit against a tamarind tree and capsized and the driver died on the spot; Ex.P2, post mortem certificate, shows the date of admission of the victim and the injuries sustained by him; and Ex.R2, motor claim form, submitted to the second respondent by the first respondent, reveals that the deceased was the driver of the lorry at the time of the accident, held that the deceased was a workman under the first respondent and he died in the accident which arose out of and in the course of his employment. Secondly, the Commissioner, considering Ex.A2, post mortem certificate, and the averments made in the claim petition, determined the age of the deceased as 30 years at the time of accident and fixed the monthly wages of the deceased at Rs.1000/- as there is no proof for the appellants' claim that he deceased was drawing Rs.2000/- per month and arrived at a sum of Rs.83,192/- as compensation payable to the appellants/claimants.

4.2. Further, the Commissioner, taking into consideration Ex.A1, first information report, wherein it is narrated by the informer that the lorry was transporting 60 persons of a marriage party, and the plea of the second respondent that the vehicle concerned is a goods vehicle and it should not be used to carry passengers/human beings except six employees of insured as per law, held that the first respondent-employer alone is liable to pay compensation to the appellants.

4.3. Hence, the present appeal by the appellants/claimants seeking for enhancement of the award amount.

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5. When the appeal was admitted, the following substantial questions of law are framed for consideration:

1. Whether the learned Commissioner calculated the Award correctly?

2. Whether the Insurance Company is liable to pay the compensation or not?

6. Learned counsel for the appellants contended that the Commissioner has erred in fixing the monthly income of the deceased as Rs.1,000/-; in calculating the percentage of salary in the factors mentioned in the Schedule of the Act and in holding that the second respondent-insurance company is not liable to pay compensation, as it is liable to pay compensation for the driver, cleaner and six coolies as per the policy conditions.

7. According to the appellants, the deceased was drawing a sum of Rs.2,000/- as monthly income and the Commissioner had erroneously restricted it to Rs.1,000/- and awarded only Rs.83,192/-.

8. The Commissioner, considering the Minimum Wages Notification viz., G.O.Ms.No.625 dated 25.5.1995, which states that the driver is entitled to receive Rs.1,740/- as wages, restricted it to Rs.1,000/- as per Explanation II of Section 4(1)(b) of the Workmen's Compensation Act, 1984, as there is no proof for the appellants' claim that the deceased was earning Rs.2000/- per month. Thus, arrived at a sum of Rs.83,192/- as compensation payable to the appellants/claimants. I am of the view that the quantum of compensation arrived at by the Commissioner is just and proper. Accordingly, the first question of law is answered against the appellants.

9. With regard to the second question of law, the issue is covered by the decision of the Apex Court in National Insurance Co. Ltd. v. Prembai Patel, reported in 2005 (3) CTC 569, wherein the Apex Court has held as follows:

"13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of Proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death

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of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

...

15. Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939, but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in Clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

16. The High Court, in the impugned judgment, has held that if the legal representatives of the deceased employee approach the Motor Accident Claims Tribunal for payment of compensation to them by moving a petition under Section 166 of the Act, the liability of the insurance company is not limited to the extent provided under the Workmen's Act and on its basis directed the appellant insurance company to pay the entire amount of compensation to the claimants. As shown above, the insurance policy taken by the owner contained a clause that it was a policy for "Act Liability" only. This being the nature of policy the liability of the appellant would be restricted to that arising under the Workmen's Act. The judgment of the High Court, therefore, needs to be modified accordingly.

17. The judgment of the High Court insofar as it relates to quantum of compensation and interest, which is to be paid to the claimants (respondent Nos.3 to 6 herein) is affirmed. The liability of the appellant insurance company to satisfy the award would be restricted to that arising under the Workmen's Act. The respondent Nos.1 and 2 (owners of the vehicle) would be liable to satisfy the remaining portion of the award."

10. As per the decision of the Apex Court, the second respondent-insurance company is liable to pay the compensation awarded by the Commissioner to the appellants/claimants and recover the amount, which exceeds its liability under the Workmen's Compensation Act, from the owner of the vehicle, by filing an execution petition before the concerned Court.

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With the above modification, the appeal is disposed of. No costs.
ATR

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1. The Deputy Commissioner of Labour
   (Commissioner for Workmen's Compensation)
   Salem.

2. The Record Keeper
   V.R. Section, High Court, Madras.

+ One cc to Mr. Ramesh Babu Advocate SR 4847
+ One cc to Mr. R. Karupan Advocate SR 4848
SSV (co)
sg 16/3/07

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